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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT THEODORE KINNUNE,

Plaintiff,

Vs.

STATE OF WASHINGTON,
WASHINGTON STATE
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Defendants.

No. 2:23-cv-00026-MKD

**Plaintiff's Statement of Material
Facts Not in Dispute**

Per LCivR 56, Plaintiff Robert Kinnune identifies the material facts below that are not dispute. Unless otherwise stated, all exhibits cited herein are included in the contemporaneously filed Declaration of Eric D. Gilman in Support of Plaintiff's Motion for Partial Summary Judgment.

1. Kinnune was a member of the United States Army Reserve. Ex. 35 at 3.
2. Defendant Washington State Department of Social and Health Services ("DSHS") owns and operates Eastern State Hospital ("ESH"). ECF No. 6-1 at 2, ¶ 1.4.
3. DSHS hired Kinnune as the full-time Chaplain at ESH, effective May 2, 2016. ECF No. 2-2 at 2, ¶ 3.2; ECF No. 6-1 at 2, ¶ 3.2.



1 4. Kinnune had his own private office. Ex. 5 (Ross Dep. at 166:16–18).

2 5. Employment positions within DSHS have “Position Description
3 Forms” or “PDFs” that describe the work and functions of each position for both
4 the employee and his supervisor. Ex. 10 (Carlson Dep. at 29:17–20).

5 6. The Position Description Form for the Chaplain position that Kinnune
6 held at ESH was officially approved on December 3, 2014 and provides for the lowest
7 level of supervision—described as “Little, employee responsible for devising own
8 work methods.” Ex. 13.

9 7. Shortly after DSHS hired Kinnune, his direct supervisor, Barbara
10 “Joey” Frost submitted a form requesting that Kinnune receive a higher salary
11 “based on his depth of experience and the talent, confidence, competence &
12 calmness he brings to his role @ ESH” Ex. 14.

13 8. DSHS authorized Kinnune to bring on a part-time chaplain to assist
14 Kinnune, and he recruited Robert Hill to for the position. Ex. 1 (Frost 30(b)(6) at
15 73:17-18); Ex. 11 (Hill Dep. at 14:4–5).

16 9. In 2016 DSHS hired Hill as an on-Call Chaplain to support Kinnune.
17 Ex. 1 (Frost 30(b)(6) at 73:17-18); Ex. 15.

18 10. Kinnune’s first Performance Evaluation, conducted by Frost, was
19 positive, noting, among other things, that “[e]very idea, program, etc. that Robert is
20 involved in is of the utmost quality” and that Kinnune “is the epitome of
21 symbolizing respect in his interactions with patients, visitors, and colleagues.” Ex.
22 16; Ex. 1 (Frost 30(b)(6) at 22:5–23:2).



1 11. In the August 2017 ESH Newsletter, Frost praised Kinnune as “a
2 charismatic, engaging, and determined chaplain, who in a very short period of time
3 has reestablished and redirected the purpose of the chaplaincy department to better
4 align with the mission of the hospital— ‘Transforming Lives.’” Ex. 17; Ex. 1 (Frost
5 30(b)(6) at 23:17–24:4).

6 12. In November 2017, Kinnune received a positive Performance
7 Evaluation from Frost stating, among other things, that Kinnune had “elevated ESH
8 Spiritual Care Services to a level of excellence not available previously” and his
9 “presence, dedication, knowledge and world experience is the reasons that ESH
10 Spiritual Care Services is highly regarded and well respected by patients, employees
11 and community members[.]” Ex. 18; Ex. 1 (Frost 30(b)(6) at 24:17–22).

12 13. Kinnune was the leader of the ESH Ethics Committee. Ex. 1 (Frost
13 30(b)(6) at 197:2–5).

14 14. Kinnune was the founder and leader of ESH’s Critical Incident Stress
15 Management Team (“CISM”). Ex. 1 (Frost 30(b)(6) at 186:11–187:7).

16 15. Kinnune created a chaplaincy/theology internship program at ESH,
17 soliciting Gonzaga University and Whitworth University to place
18 chaplaincy/theology student interns at ESH under Kinnune’s “guidance and
19 direction.” Ex. 18 at 3.

20 16. April Ross was one of the interns that Kinnune supervised. Ross Dep.
21 at 18:6–9.

22 17. Ross’s internship at ESH was originally scheduled to last one semester,
23 but she extended it several times for a period of approximately 15 months since the
24



1 experience was so positive and beneficial for her. Ex. 5 (Ross Dep. at 18:6–14, 21:20–
2 24).

3 18. On June 20, 2018, the Department of the Army ordered Kinnune to
4 report for active duty on July 23, 2018. Ex. 19 at 3.

5 19. Kinnune communicated his military orders to his supervisor Joey Frost,
6 ESH's then-CEO Mark Kettner, ESH's then-COO Ronda Kenney, DSHS's then-
7 Human Resources Business Partner Amy Jo Carlson, and others on June 21, 2018.
8 Ex. 19 at 3.

9 20. Kinnune used ESH vacation time after receiving the June 20, 2018
10 Army orders, until he deployed. Ex. 19 at 1; Ex. 20.

11 21. Kinnune's initial period of active duty was for 365 days, with a
12 scheduled end date of July 22, 2019. Ex. 19 at 3.

13 22. Prior to being called up for active military service in 2018, Kinnune
14 received uniformly positive annual Performance Evaluations. Ex. 1 (Frost 30(b)(6)
15 at 22:25–23:2; 24:20–22; 25:12–16).

16 23. Prior to being called up for active military service in 2018, Kinnune
17 never had any disciplinary action, complaint against him, or documented conduct or
18 performance issues at ESH. Ex. 1 (Frost 30(b)(6) at 25:17–21; 32:25–33:7).

19 24. No ESH patient has ever complained about Kinnune not meeting his or
20 her spiritual care service needs. Ex. 1 (Frost 30(b)(6) at 53:5–13).

21 25. DSHS hired Kinnune's former intern, April Ross, to be the interim
22 Chaplain while Kinnune was on military service leave. Ex. 1 (Frost 30(b)(6) at
23 134:17–21); Ex. 9 (Kenney Dep. at 29:1–5).



1 26. While Kinnune was on military service leave, he emailed occasional
2 updates to a number of DSHS employees from his personal email address. Exs. 55,
3 56, and 57.

4 27. Frost responded to one such personal email from Kinnune on August
5 18, 2018, writing, in part: “Keep in touch.” Ex. 55.

6 28. On September 6, 2018, Kinnune emailed Frost about a text message he
7 received from Ross that concerned him because Ross wrote that the Chaplaincy
8 “will come back to [Kinnune] in whatever shape that is[.]” Ex. 21.

9 29. Frost called Ross into a meeting in September 2018 to discuss the fact
10 that Kinnune had raised concerns about Ross. Ex. 5 (Ross Dep. at 153:8–15).

11 30. Sometime between September and December 2018, Frost asked Ross
12 to prepare a written summary of Ross’s grievances with Kinnune. Ex. 1 (Frost
13 30(b)(6) at 101:2–9).

14 31. Frost asked Ross to prepare the written summary of Ross’s issues with
15 Kinnune in preparation for a meeting with then-CEO Kettner and then-COO
16 Kenney in January 2019, during which Ross was to communicate her complaints
17 about Kinnune. Ex. 5 (Ross Dep. at 143:5–144:6); Ex. 1 (Frost 30(b)(6) at 105:24–
18 106:6).

19 32. The written narrative that Ross prepared for the January 2019 meeting
20 was six pages and included multiple allegations against Kinnune, including that he
21 may have had sexual intercourse with an ESH patient; fondled an ESH patient’s
22 breasts; engaged in “bullying”; espoused misogynistic views about the role of
23
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1 women; espoused discriminatory views about LGBTQ+ individuals, and
2 discriminated based on religion. Ex. 22.

3 33. Ross read her six-page narrative aloud at the January 2019 meeting and
4 provided a copy. Ex. 5 (Ross Dep. at 144:17–23); Ex. 1 (Frost 30(b)(6) at 107:3–15).

5 34. The attendees at the January 2019 meeting included then-CEO
6 Kettner, then-COO Kenney, then-Human Resources Business Partner Carlson,
7 then-Director of Organizational Development and Communications Frost, and
8 interim Chaplain Ross. Ex. 5 (Ross Dep. at 144:17–23, 145:12–13, 153:16–25).

9 35. It is rape in the second degree in violation of RCW 9A.44.050 for an
10 ESH employee to have sexual intercourse with an ESH patient. Ex. 7 (Kettner Dep.
11 at 24:15–24:10); Ex. 9 (Kenney Dep. at 39:15–18).

12 36. DSHS trains everyone it employs at ESH that each employee is a
13 “mandatory reporter” of potential abuse of vulnerable adults, and every patient at
14 ESH is necessarily a vulnerable adult. Ex. 10 (Carlson Dep. 53:8–18); Ex. 9 (Kenney
15 Dep. at 38:13–39:14); Ex. 7 (Kettner Dep. at 22:5–23:17).

16 37. If DSHS employees learn of an allegation that an employee had fondled
17 the breasts of an ESH patient, that triggers an obligation for the DSHS employees to
18 communicate the allegation to law enforcement. Ex. 10 (Carlson Dep. at 53:19–25).

19 38. If DSHS employees learn of an allegation that an ESH employee had
20 sexual intercourse with a current or former patient, that is something that DSHS
21 employees are required to report to law enforcement under the mandatory reporter
22 laws applicable to state mental institutions. Ex. 9 (Kenney Dep. at 39:19–24).



1 39. Following the January 2019 meeting, no one within DSHS, including
2 the attendees at the meeting, made a report to law enforcement regarding the
3 allegations made by Ross. Ex. 1 (Frost 30(b)(6) at 116:3-9); Ex. 10 (Carlson Dep. at
4 65:3-17); Gilman Decl. at ¶4.

5 40. DSHS Administrative Policy No. 18.66 prohibits, among other things,
6 discrimination, sexual harassment, other forms of harassment, and inappropriate
7 behaviors. Ex. 23.

8 41. If a DSHS employee learns of a potential violation of Policy No. 18.66,
9 he or she is required to report the potential violation which, in turn, triggers a
10 mandatory investigation the complies with DSHS Administrative Policy No. 18.89.
11 Ex. 3 (Marsik 30(b)(6) at 32:9-33:13); *see* Ex. 24.

12 42. Ross's six-page narrative, which she read aloud at the January 2019
13 meeting, contains allegations of potential violations of Policy No. 18.66 by Kinnune.
14 Ex. 7 (Kettner Dep. at 56:10-24); Ex. 9 (Kenney Dep. at 42:12-44:01); Ex. 10
15 (Carlson Dep. at 58:11-15, 65:3-13).

16 43. A DSHS employee who is alleged to have potentially violated Policy
17 No. 18.66 must receive, among other things, notice and an opportunity to speak in
18 his own defense. Ex. 10 (Carlson Dep. at 18:13-23); Ex. 1 (Frost 30(b)(6) at 37:23-
19 38:18, 116:19-117:7); Ex. 9 (Kenney 18:07-19:1); Ex. 7 (Kettner Dep. at 20:6-19).

20 44. On April 8, 2019, the Department of the Army amended Kinnune's
21 orders, extending his tour length from 365 to 709 days, with a scheduled end date of
22 June 30, 2020. Ex. 25.



1 45. Kinnune sent DSHS a copy of the Army's April 8, 2019 amended
2 orders and a copy of the same was received in the payroll department on June 5, 2019.
3 Ex. 25.

4 46. The Washington legislature passed a law that required all state
5 employed Chaplains be renamed Religious Coordinators, beginning in 2019.¹ Exs. 61,
6 62.

7 47. The legislation changing the job title from "Chaplain" to "Religious
8 Coordinator" did not require DSHS to update or establish new Position Description
9 Forms because that change was updated automatically by the State Office of
10 Financial Management's Director of State Human Resources. Ex. 8 (Hammer Dep.
11 at 21:8-14); Exs. 61, 62.

12 48. In the months approaching Kinnune's scheduled return from military
13 service, Hill attended meetings of the Spiritual Care Services department and
14 observed Frost and Ross discussing their desire not to bring Kinnune back to his
15 position as the Chaplain, and he observed Frost express frustration about having to
16 reemploy Kinnune following his military service. Ex. 11 (Hill Dep. at 58:13-15, 59:9-
17 16); ECF No. 2-2 at 30-31.

18 49. Frost instructed Hill not to communicate with Kinnune about what had
19 been discussed about Kinnune during Spiritual Care Services department meetings.
20 Ex. 11 (Hill Dep. 51:9-52:22, 82:4-13).

21
22 ¹ The Parties and witnesses in this case refer to "Chaplain" and "Religious
23 Coordinator" interchangeably.
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1 50. On May 5, 2020, the Department of the Army amended Kinnune's
2 orders, extending his tour length from 709 days to 769 days, with a scheduled end
3 date of August 29, 2020. Ex. 28.

4 51. On May 12, 2020, Kinnune forwarded the Army's May 5, 2020
5 amended orders to Carlson, Kettner, Frost, and Kenney, along with an email
6 explaining his intent to return to work at ESH on August 31, 2020. Ex. 28.

7 52. Kinnune properly notified DSHS about all his military orders that
8 would result in military-service-related absence, in compliance with USERRA. Ex. 2
9 (Gulick 30(b)(6) at 26:4-6, 18-21).

10 53. As a government agency using public funds, DSHS needed hard data
11 showing the number of requests being made for spiritual care services, the services
12 being provided, and any unmet requests for spiritual care services to support
13 doubling the number of full-time Religious Coordinators. Ex. 1 (Frost 30(b)(6) at
14 81:01-11); Ex. 26; Ex. 7 (Kettner Dep. at 11:14-23, 29:9-16, 29:24-30:4).

15 54. During the entire time that Kinnune was on military service leave, ESH
16 maintained a Spiritual Care Services Monthly Report that showed how many
17 patients requested services, in order to justify staffing needs within the Spiritual Care
18 Services department. Ex. 1 (Frost 30(b)(6) at 27:9-15); Ex. 27.

19 55. Nothing in the Spiritual Care Services Monthly Reports maintained at
20 ESH reflects unmet patient needs. Ex. 1 (Frost 30(b)(6) at 87:16-18).

21 56. Nothing in the in the Spiritual Care Services Monthly Reports
22 maintained at ESH reflects any trend showing an increased need for spiritual care
23 services at ESH. Ex. 1 (Frost 30(b)(6) at 90:20-24); Ex. 5 (Ross Dep. at 106:16-22).



1 57. Western State Hospital is ESH's "sister hospital," has approximately
2 two-and-a-half times as many beds and three times the employees as ESH, and has
3 employed between one and two full-time chaplains since 2016. Ex. 1 (Frost 30(b)(6)
4 at 58:11-22, 59:10-18); Ex. 66.

5 58. From at least 1989 until Kinnune's return from military service in 2020,
6 ESH always employed just one full-time Chaplain. Ex. 9 (Kenney Dep. at 8:22-9:9).

7 59. On May 15, 2020, Carlson sent paperwork to the Class and
8 Compensation department seeking approval to establish a new full-time Religious
9 Coordinator position, which would cover Kinnune's position. Ex. 29.

10 60. Carlson's May 15, 2020 email included a proposed Position Description
11 Form for the new Religious Coordinator position, which would cover Kinnune's
12 position, created by Carlson and Frost, and signed May 7, 2020. Ex. 29.

13 61. Among the changes to the new Position Description Form created by
14 Carlson and Frost was an increase in the level of supervision from the lowest level
15 ("Little, employee responsible for devising own work methods") to the highest
16 ("Close, detailed"). *Compare* Ex. 13 at 07010117 *with* Ex. 29 at 0701-2787.

17 62. On May 21, 2020, Carlson and Frost received an email from the Class
18 and Compensation department advising that the request to create a new Religious
19 Coordinator position would not be processed due to a hiring freeze. Ex. 30.

20 63. The Position Description Form created by Carlson and Frost and
21 signed on May 7, 2020 was never approved as required by DSHS's policies and
22 procedures. Exs. 30, 49, 10 (Carlson Dep. at 28:23-29:03).



1 64. It is improper and highly inappropriate to present an unapproved
2 Position Description Form to an employee for signature. Ex. 1 (Frost 30(b)(6) at
3 139:10–13); Ex. 9 (Kenney Dep. at 85:11–16); Ex. 9 (Carlson Dep. at 29:4–8).

4 65. On June 17, 2020, DSHS summarily terminated its on-call relationship
5 with Chaplain Hill, against Hill’s wishes. Ex. 31; Ex. 1 (Frost 30(b)(6) at 70:22–71:7);
6 Ex. 11 (Hill Dep. at 73:19–22).

7 66. Hill was not terminated for performance or disciplinary issues. Ex. 11
8 (Hill Dep. at 74:24–75:04); *see* Ex. 1 (Frost 30(b)(6) at 68:1–71:12, 74:22–76:11, 85:1–
9 86:1, 164:12–165:12, 166:8–186.)

10 67. Hill’s on-call relationship with DSHS meant that he would only be paid
11 for the hours he was called in to assist; it would not have cost DSHS anything to
12 maintain the on-call relationship with Hill if it did not call him in to assist. Ex. 1 (Frost
13 30(b)(6) at 72:19–73:01).

14 68. In mid-June 2020, Frost and Ross worked to reconstitute the CISM
15 team—which had been disbanded in approximately March 2019—under some
16 unarticulated time constraint. Ex. 1 (Frost 30(b)(6) at 193:01–10, 200:18–201:7,
17 207:23–208:1). Ex. 32.

18 69. On June 22, 2020, Frost announced the members of the newly
19 reconstituted CISM team. Ex. 33.

20 70. Ross was appointed to be the leader of the newly reconstituted CISM
21 team. Ex. 1 (Frost 30(b)(6) at 187:15–19, 207:23–208:1); Ex. 9 (Kenney Dep. at
22 83:22–84:2).

1 71. On June 26, 2020, Kinnune emailed Carlson, Frost, Kenney, and
2 Kettner to provide an update on his plans to return to work at ESH, and to offer to
3 provide his DD214 Honorable Discharge from Active Duty papers. Exs. 34.

4 72. Kinnune satisfied his obligations under USERRA to reapply for his job.
5 Ex. 2 (Gulick 30(b)(6) at 31:2–6, 15–18).

6 73. On June 28, 2020, Kinnune faxed his DD214 to Kettner, Frost, and
7 Kenney. Ex. 35.

8 74. On June 30, 2020, Frost emailed a meeting invitation with the subject
9 “Robert Kinnune” to Carlson and Kenney, setting a meeting for July 9, 2020. Ex.
10 36.

11 75. On the same “Robert Kinnune” email thread, Frost explains that
12 “[t]his is a short meeting to discuss our plan.” Ex. 36.

13 76. On the same “Robert Kinnune” email thread, to which then-CEO
14 Kettner was added, Frost reports that she had a conference with her two
15 subordinates, Ross and Susan Bordges, on July 21, 2022, “to ensure they have
16 completed their piece.” Ex. 36.

17 77. Carlson and Kenney have both testified that they have no recollection
18 of the July 2020 meetings, “the plan” for Kinnune that was discussed at that time,
19 or what Ross and Bordges’s “piece” of that plan was. Ex. 10 (Carlson Dep. at 43:13–
20 44:3); Ex. 9 (Kenney Dep. at 34:15–20, 40:8–15).

21 78. On July 17, 2020, Bordges emailed Frost a document that Bordges had
22 prepared, outlining criticisms of Kinnune. Exhibit 37.
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1 79. Bordges testified that she does not recall why she prepared a document
2 with criticisms of Kinnune for Frost. Bordges at 41:8-17, 42:8-12, 42:24-43:2,
3 43:22-44:11, 62:22-63:2-11).

4 80. Bordges also sent other emails about criticisms of Kinnune on July 16,
5 22, and 29, 2020. Ex. 38.

6 81. On July 26, 2020, Ross sent Frost an email that says “here is the
7 document you requested,” and attached the six-page narrative that Ross had read to
8 ESH administrators back in January 2019. Ex. 39.

9 82. Frost testified that she does not recall why she asked Ross to email the
10 six-page narrative in July 2020, (Ex. 1 (Frost 30(b)(6) at 113:22-114:12)), though she
11 also testified that any action related to Ross’s six-page narrative should only be
12 handled by Human Resources (*Id.* at 108:13-109:6, 110:19-25).

13 83. DSHS created a calendar event with a start date of August 12, 2020,
14 titled “review Kinnune report,” that contemplates a “[r]eview of all documents
15 submitted by Joey Frost” related to “Robert Kinnune’s actions while serving as the
16 perm chaplain prior to his military leave that began in 2018,” and notes that Kinnune
17 “is returning to ESH on September 1, 2020.” Ex. 40.

18 84. Frost testified that she unilaterally asked Ross to email her the six-page
19 narrative in July 2020, without consulting with HR, and says she never passed the
20 document along to anyone. Ex. 1 (Frost 30(b)(6) at 122:25-123:19).

21 85. Kinnune was never told about the July 2020 meetings about him and
22 was not given an opportunity to respond to the allegations made against him in July
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1 2020, as he only learned about these events through discovery in this case. Ex. 1
2 (Frost 30(b)(6) at 121:14–122:13).

3 86. Frost scheduled a meeting between her, Kenney, and Kinnune at noon
4 on Friday, August 28, 2020, to discuss Kinnune’s return to work on August 31, 2020.
5 Ex. 41.

6 87. On the morning of August 28, 2020, Frost, Carlson, and Kenney were
7 creating and editing a document titled “Spiritual Care Services Work
8 Instructions/Expectations,” which was completed less than an hour before the
9 meeting between Frost, Kenney, and Kinnune. Ex. 42.

10 88. During the August 28, 2020 meeting, Frost informed Kinnune that
11 Ross would be staying on as full-time Religious Coordinator and that Kinnune would
12 be sharing his duties with her. Ex. 1 (Frost 30(b)(6) at 125:19–23).

13 89. During the August 28, 2020 meeting, Frost gave Kinnune both the new
14 Religious Coordinator Position Description Form and the “Spiritual Care Services
15 Work Instructions/Expectations” document and told him he had to sign both. Ex. 1
16 (Frost 30(b)(6) at 124:25–125:9, 159:6–17); Ex. 45 at 2.

17 90. Frost never informed Kinnune that the Religious Coordinator Position
18 Description Form that told Kinnune to sign at the August 28, 2020 meeting had
19 never been approved in accordance with DSHS policy and procedure. Ex. 1 (Frost
20 30(b)(6) at 153:18–22); Ex. 9 (Kenney Dep. at 84:14–85:6); Ex. 54.

21 91. When Kinnune returned from military service leave in 2020, he was
22 subject to a greater level of supervision and scrutiny by his supervisor, Frost, than he
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1 had been before he left for military service in 2018. Ex. 1 (Frost 30(b)(6) at 133:11–
2 16).

3 92. The plan was for Kinnune to share office space with Ross. Ex. 1 (Frost
4 30(b)(6) at 220:8–11).

5 93. At 3:22 P.M. on August 28, 2020, Ross circulated a new charter for the
6 Ethics Committee to vote on but did not include Kinnune on the email. Ex. 43; Ex.
7 1 (Frost 30(b)(6) at 202:16–204:16).

8 94. The Ethics Committee needed a new charter in 2020 because it had
9 been disbanded in March 2019 and was being reconstituted shortly before Kinnune
10 returned from military service. Ex. 1 (Frost 30(b)(6) at 202:9–12, 208:2–7); Ex. 44.

11 95. The CISM team was disbanded or dissolved in or before March 2019.
12 Ex. 1 (Frost 30(b)(6) at 200:14–201:7).

13 96. By failing to return Kinnune to his leadership positions on the Ethics
14 Committee and the CISM team, DSHS did not return Kinnune to the same job. Ex.
15 9 (Kenney Dep. at 85:17–86:12 (“if we removed two of the job functions from what
16 he did when he was previously there, then he did not return to the same job, even
17 though it was the same rate of pay and the essential functions were the same.”)).

18 97. On Sunday, August 30, 2020, Kinnune sent an email to Frost and
19 Kenney that included a link to information about USERRA and the following excerpt
20 from the Department of Justice’s materials:

21 USERRA entitles servicemembers to return to their
22 civilian employment upon completion of their military
23 service with the seniority, status, and rate of pay that they
24 would have obtained had they remained continuously
employed by their civilian employer. USERRA also



1 prohibits discrimination based on present, past and future
2 military service.

3 Ex. 41.

4 98. On September 1, 2020, Frost wrote up Kinnune for multiple alleged
5 transgressions using a DSHS “Communication Records” form, citing Kinnune for
6 (a) remaining on the clock for 2.40 hours when he was “only scheduled/approved
7 for 1 hour”; (b) obtaining his office key from security and looking at the office (that
8 he would be sharing with Ross) “without [Frost’s] knowledge”; and (c) entering a
9 unisex bathroom “while it was in use by a female co-worker.” Ex. 45.

10 99. Religious Coordinator is an overtime exempt position and receives the
11 same compensation whether the employee is clocked in for one hour or sixty hours.
12 Ex. 5 (Ross Dep. at 75:25–76:08).

13 100. Kinnune disputes that there was any issue with him visiting, on Friday
14 August 28, 2020, the office that he was to share with Ross starting Monday, August
15 31, 2020. Ex. 45 at 1.

16 101. The lock on the door of the unisex bathroom that Kinnune entered—
17 while a female co-worker was brushing her teeth—had been broken since at least
18 February 2020, resulting in multiple staff people being walked in on. Ex. 46; Ex. 12
19 (Kinnune Dep. at 86:1–21).

20 102. On September 2, 2020, Kinnune contacted Carlson about his USERRA
21 rights and provided Carlson with a 97-page Department of Justice guide titled
22 “Employment Rights of the National Guard and Reserve.” Ex. 47.
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1 103. According to DSHS policy and testimony, Kinnune's September 2,
2 2020 communication with Carlson about his USERRA rights was protected activity
3 for which he could not be retaliated against. Ex. 10 (Carlson Dep. at 79:20-80:6).

4 104. Kinnune received multiple written complaints and criticisms from
5 Frost and Ross in the days after returned from military service leave. Ex. 48
6 (Answers to Interrogatory No. 5).

7 105. After going through every complaint about Kinnune's behavior or
8 performance that DSHS identified in discovery, Rule 30(b)(6) designee Frost
9 conceded that every single written criticism of Kinnune's performance was created
10 after Kinnune went on military service leave in 2018. Ex. 1 (Frost 30(b)(6) at 228:19-
11 22).

12 106. In response to COVID-19, employees at ESH were assigned to perform
13 temperature checks and screenings at designated entry points. Ex. 5 (Ross Dep. at
14 56:22-57:10).

15 107. Upon returning from military service, Kinnune was scheduled for 12
16 COVID-19 screening shifts during a two-week period from September 14-27, 2020;
17 Ross was not scheduled for any COVID-19 screening shifts in September 2020. Ex.
18 Ex. 49.

19 108. Ross had only been scheduled for 26 COVID-19 screening shifts during
20 the six-month period from March 30 to October 11, 2020, on average, less than one
21 shift per week. Ex. 49.

1 109. On September 24, 2020, Kinnune reported to Human Resources that
2 he was experiencing a hostile work environment and unprofessional conduct by
3 Frost and Ross. Ex. 51.

4 110. According to DSHS policy and testimony, Kinnune's report to Human
5 Resources that he was experiencing a hostile work environment, created by Frost
6 and Ross, following his military service leave was protected activity for which he
7 could not be retaliated against. Ex. 10 (Carlson Dep. at 80:15–23).

8 111. Matt McCord, the investigator assigned to investigate Kinnune's
9 complaint against Frost and Ross interviewed Kinnune, Hill, and Bordges and
10 received conflicting information. Ex. 53; Ex. 59.

11 112. DSHS stopped the investigation into Kinnune's complaint without the
12 investigator interviewing the subjects of the investigation, Frost and Ross. Ex. 59 at
13 6 ("I didn't speak with Frost, Ross (potential subjects)").

14 113. When McCord interviewed Bordges as part of his "Fact Finding"
15 inquiry into Kinnune's hostile work environment report, Bordges never told
16 McCord that just months prior, in July 2020, she sent multiple emails to Frost, at
17 Frost's request, that contained various criticisms of Kinnune. Ex. 38.

18 114. No one within DSHS informed McCord about the July 2020 emails or
19 meetings about "the plan" for Kinnune, or the various emails and documents
20 compiled by Frost, Ross, and Bordges critical of Kinnune. Ex. 59.

21 115. Based on the inaccurate or incomplete information that DSHS provided
22 to McCord, he was unable to substantiate any of Kinnune's claims. Ex. 59 at 6.
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1 116. On September 23, 2020, Kinnune requested Government Service
2 Leave to go work with the Spokane County Sheriff Department and was granted
3 leave for 12 months. Ex. 50; Ex. 52.

4 117. On December 13, 2020, Kinnune sent a holiday greeting email from his
5 personal email to a group of DSHS employees, just as he had done multiple times
6 while he was on military service leave. Ex. 58.

7 118. On December 14, 2020, Frost responded to Kinnune's December 13
8 email, directing him not to send personal emails to an ESH distribution list while he
9 was on leave. Ex. 58.

10 119. Kinnune responded, copying others, and reported that Frost's email
11 appeared to be another act of reprisal related to his HR complaint and his USERRA
12 rights. Ex. 58.

13 120. In April or May 2021, while Kinnune was still on Governmental Service
14 Leave, Carlson or Kettner asked Kenney to look into whether Kinnune had somehow
15 been dishonest in requesting Government Service Leave. Ex. 9 (Kenney Dep. at
16 78:14-16) 80:12.

17 121. On May 5, 2021, while Kinnune was still on Governmental Service
18 Leave, DSHS sent Kinnune an "official notification," signed by the CEO, that he
19 was being investigated for concerns that he "misrepresented [his] leave of absence."
20 Ex. 62; Ex. 7 (Kettner Dep. at 59:2-7).

21 122. After the investigation into Kinnune was initiated, DSHS realized that
22 "Robert Kinnune was approved for and donated shared leave in error" in relation to
23
24



1 his Government Service Leave, and in any event, Kinnune “did not utilize any
2 shared leave.” Ex. 63.

3 123. The issue for which Kinnune was investigated in 2021 concerns
4 administrative categorization of an employee and is not the type of issue that
5 typically results in a notice of investigation. Ex. 9 (Kenney Dep. at 80:18–81:12).

6 124. Regarding DSHS’s 2021 investigation into Kinnune, former COO
7 Ronda Kenney concedes “[t]hat we [were] trying to find something else on him.”
8 Ex. 9 (Kenney Dep. at 81:13–16).

9 125. By letter dated September 23, 2021, Kinnune communicated through
10 counsel to Kettner that Kinnune could not return to ESH as the hospital had not
11 taken action to remedy the violations of state and federal law reported by Kinnune.
12 Ex. 64.

13 126. After Kinnune’s employment at ESH officially ended, the Position
14 Description Form for the Religious Coordinator position was amended to the level
15 of supervisory oversight back to the lowest level, as it was before Kinnune left for
16 military service in 2018. Ex. 65.

17 Respectfully submitted November 7, 2023.

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CERTIFICATE OF SERVICE

I certify that on November 7, 2023 in Tacoma, Washington, I caused the attached **Plaintiff's Statement of Material Facts Not in Dispute** to be served as follows:

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Via:

- ☐ Messenger
☐ First Class U.S. Mail
☒ Electronic CM/ECF
Notification
☒ Email per e-service agreement
☐ _____

/s/ Alexis Baltazar
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